

NEW JERSEY MILITIA NEWSLETTER

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All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

-- Article 1, Section 1, New Jersey State

Can Soldiers Be Peace Officers?

The Waco Disaster and the Militarization of Law Enforcement

By David B. Kopel and Paul M. Blackman

Excerpt V

The Waco Siege and the Hostage Rescue Team (Continued)

There were numerous problems in the negotiations between the FBI and the Branch Davidians. The FBI had no expertise—and no interest in acquiring any expertise--regarding the Branch Davidian religion. Koresh was, very likely, mentally ill. (Ever since a 1985 trip to Israel, Koresh had been hearing a disembodied voice which revealed Bible secrets to him. In a 1987 teaching session, Howell described one of his experiences with the voice: "... What--what if you turned on the water in the shower and all of a sudden it said, 'Drop down ye waters from above, let the faucets pour out righteousness. I the Lord have created it.' Huh? You know. Sh--and, and the songs of blessing, showers of blessing, starts being heard in your room or in the bathroom, right? I mean let's face it. Let's be realistic now. This guy is freaked out, isn't he? OK? He's--this--Cyrus [Koresh] has an experience which none--very few and far in between have had." -- "The Shower Head" Tape 26 (Aug. 24, 1987) (teaching session of David Koresh) <http://www.ime.net/~mswett/shower.html>) The Branch Davidian negotiators and the FBI negotiators were both often guilty of dishonesty or disingenuousness; and while the Branch Davidians preached at the FBI negotiators--to the extent the negotiators would allow them--the Davidians generally refused to provide straightforward explanations of their religion or intentions. But of all the

factors impeding negotiations, perhaps the greatest factor--in retrospect, the decisive factor--was the Hostage Rescue Team. While the FBI negotiators were in a building miles away from Mount Carmel, at Texas State Technical College, the FBI team (the HRT) was laying siege to the Branch Davidians. HRT sniper teams stared at Mount Carmel, while Branch Davidian sentries stared back. At times, the action-oriented HRT would take action, simply because it could stand the inaction no longer. For example, the HRT temporarily cut off the electricity to the Mount Carmel Center--not for any negotiating or safety purpose--but simply to boost the morale of the tactical "people," and the rest of law enforcement "who [were] out and cold and away from home." (testimony of Jeffrey Jamar) As Dr. Alan Stone (an independent reviewer of the Justice Department report on Waco) later observed, some of the tactical measures were mainly used "to relieve [the action-oriented] agents' desire to act."

A modicum of apparent conflict between negotiators and the tactical commanders can be useful -- the out-of-custody equivalent of "good cop, bad cop" interrogations. (At one point, when a negotiator blamed the commanders, Koresh summarized the commanders' viewpoint: "They want patience, and they want it now.") --but the conflict between the negotiating and tactical team was much more profound. The negotiating team found itself having to come up with excuses

for aggressive tactical actions that the tactical team had not bothered to tell the negotiators about. The tactical team grew increasingly frustrated with the negotiators' allegedly excessive patience with the Branch Davidians. The two FBI teams were often at cross purposes.

For example, after days of discussions, the negotiators finally decided to send some milk in for the Branch Davidian babies; the tactical team promptly cut off the electricity, making it difficult to store the milk. The electricity cut-off postponed the departure of two Davidians whom the negotiators had convinced to make plans to leave, but would no longer even talk about it.

Shortly after midnight on March 21, two Davidians left, and later during the day, five more exited. The number of people inside had declined to about 84, from a total of about 127 on the morning of the BATF raid. The negotiators and Davidian Schneider agreed in general that it had been a very successful day.

That same day, FBI commander Jeff Jamar and HRT leader Dick Rogers decided to increase tactical pressure in order to "demonstrate the authority of law enforcement."

That evening, a loudspeaker barrage began. Among the items blasted on the loudspeakers were the sounds of dentists' drills, locomotives, helicopters hovering, loud obnoxious music, Christmas songs, Tibetan Buddhist chants,

previously recorded negotiations, squawking birds, cows mooing, clocks ticking, telephone busy signals, and the cries of rabbits being killed.

The loudspeakers were used contrary to the negotiators' advice, and the advice of the FBI's psychological experts, who had warned that tactical pressure "would succeed in shutting down negotiations and convince Koresh and his followers that the end was near." (Edward S.G. Dennis, Jr., "Evaluation of the Handling of the Branch Davidian Stand Off in Waco, Texas, February 28 to April 19, 1993", U.S. Dept. of Justice, Oct. 8, 1993) FBI psychologist Peter Smerick warned that tactical pressure "might unintentionally make Koresh's vision of a fiery end come true." Commander Jamar later evaded questions at a Congressional hearing and from a Justice Department investigator about who, if anyone, advised Jamar that the increased tactical pressure would be wise.

The Davidian response was fury and dismay. Koresh said that no more people would be coming out. In fact, only three more persons did exit, once the increased pressure began. Livingstone Fagan left on March 23. The other two exits were non-Davidians who had sneaked into the Mount Carmel Center during the siege out of curiosity.

Over the course of the siege, FBI tank drivers destroyed a mobile home, a dozen motorcycles, two dozen children's go-carts (expensive presents, recently acquired), tricycles, and bicycles; knocked out the windshield of a bus; and flattened a pickup truck. Cars belonging to the adults were crushed by tanks, or ripped apart with crowbars, with the windows smashed and the tires slashed. The Hostage Rescue Team "carried away the fence from Mount Carmel's front yard, flipped a bass fishing boat, and overturned a bulldozer that the community had rented--for some \$3,000 per month--from a local building supply house."

Neither destroying children's toys, nor desecrating the cemetery of highly religious people is apt to facilitate negotiations. (Reavis, *supra* note 45, at 224. "The government's tracked vehicles also planed the surface of the Mt. Carmel cemetery, leaving Anna Hughes, among others, to await Judgment in an unmarked plot.") Instead, the destruction undermined the FBI negotiators who were promising gentle treatment for children and adults who left the

compound. The tactical team's decisions to increase pressure, often undertaken without consulting the negotiating team, made the efforts of the negotiating team to build trust increasingly difficult. (Peter J. Boyer, "Children of Waco", *The New Yorker*, May 15, 1995) FBI negotiator Byron Sage later acknowledged that having the tanks flatten the cars was a huge mistake that dramatically changed the course of negotiations. (Richard Leiby, "Frontline": What Went Wrong at Waco? *Wash. Post*, Oct. 17, 1995)

It is impossible to know if negotiations would have succeeded but for the aggressive acts of the HRT, but it is clear that the "tactical" activities played a major role in destroying the negotiators' efforts to create an atmosphere of trust.

V. Groupthink

Neither the Branch Davidians, nor the BATF, nor the FBI, were composed of or led by stupid persons. Yet at Waco, all of these groups made extremely bad decisions. One reason for the high-risk, low-quality decisions of the Branch Davidians, BATF, and FBI is what is known as "groupthink." (The discussion of groupthink is based on Paul T. Hart, *Groupthink in Government: A Study of Small Groups and Policy Failure* (1990), which summarizes previous research on groupthink, while also making substantial original contributions.)

The term groupthink was created by academics in the early 1970s, to describe how groups of intelligent individuals could collectively make decisions much worse than the individuals might have made if they had decided alone. Public policy disasters which have been studied as instances of groupthink include the Bay of Pigs invasion during the Kennedy administration; the Johnson administration's escalation of the Vietnam War; the Carter administration's Iranian hostage rescue mission; the decision of Morton Thiokol managers to proceed with the Space Shuttle Challenger launch in 1986 despite the warnings of engineers, in order not to interfere with NASA's desire for a timely

launch which would help NASA politically; and the Reagan administration's Iran-Contra fiasco.

Many of the factors leading to groupthink were present, on all sides, at Waco. First, in groups which are vulnerable to groupthink, group members tend to value the group above everything else. The social isolation of law enforcement officers from the non-police community has been documented by many researchers. (See, e.g., Jonathan Rubinstein, *City Police* 434-35 (1973))

Unquestioning adherence to group norms is likely all the higher in special high-prestige law enforcement groups, such as the FBI, the HRT, or the Special Response Teams (the BATF versions of the HRT). The Branch Davidians, of course, explicitly saw their church as the only good thing in a Babylonian World permeated by sin.

Groupthinking groups tend to have certain structural flaws: insularity; no tradition of impartial leadership; no norms requiring methodical decision-making; and a homogeneous background for their members. The militaristic HRT and SRTs, heavily drawn from ex-military personnel, had these flaws, as did the BATF and the FBI. While the Branch Davidians were highly heterogeneous in terms of race, nationality, and social background, they were intensely homogeneous in their ideology.

Groups likely to suffer from groupthink often overestimate their group's morality and invulnerability, while also stereotyping out-groups. The Branch Davidians thought themselves the only righteous people in the world, thought themselves invulnerable if God wanted them to be invulnerable, and stereotyped their adversaries as the Babylonian tools of Satan. Conversely, the FBI and BATF stereotyped their adversaries as "cultists," and acted as if resistance to the armed might of the government were inherently immoral.

Groupthink tends to produce self-censorship among

the dissenters, as when FBI behavioral psychologist Peter Smerick changed his memos to support the aggressive "tactical" approach that his superiors wanted.

Groupthink is more likely to occur in a provocative situation with high amounts of external stress. In these situations, groupthink is especially likely when the members of the group have little hope for better solutions than those proposed by the leader. The attractiveness of the Branch Davidians' alternative to Koresh--surrendering to the FBI--was greatly undermined by the government's treatment of the adults and children who did surrender. Every adult who left was immediately arrested. The children were put in a group home, contrary to negotiators' promises that the children would be sent to relatives.

Next month: More
"Groupthink"

Letters to the Editor

The New Jersey Militia Members,

In the bitter cold my wife and friends enjoyed our visit to Washington Crossing and the 48th reenactment of the heroic George Washington and troops crossing of the Delaware in 1776.

But to our chagrin upon reading the poem "A Visitor from the Past", your flyer hand-out, we were angry and disappointed to learn that you were "using" a beautiful historic celebration to poison the readers mind with pro-NRA, anti-abortion, anti-United Nations, anti-minorities and anti-government propaganda.

Shame on you, your websites and misguided followers.

Coopers and Friends
Union County

Ed.: We re-read the offending poem to see what upset our Union County friends.

"You buy permits to travel, and permits to own a gun" apparently makes us "pro-NRA" (and possibly "anti-AAA"). But the statement itself is factual.

"Your daughters visit doctors so their children won't be born" allegedly makes us "anti-abortion", but that statement is also true.

When emotion conquers reason, as is the case with the Coopers, it projects things that are not there, such as our non-existent "anti-minorities" bias.

If the lines ("You've given government control to those who do

you harm/To men who burn down churches and steal the family farm/They keep our country deep in debt, put men of God in jail/Harass your fellow countrymen, while corrupted courts prevail") make us "anti-government" thank goodness we're not among the amoral pro-government crowd that sees nothing wrong with those crimes.

We agree with George Washington: "Government is not reason; it is not eloquence. It is force. And force, like fire, is a dangerous servant and a fearful master." -- The UN would be another such government.

For a free copy of the flyer send a SASE.

* * *

Gentlemen,

Thank you for your newsletter. I am letting other people read it as I write this letter. All patriot information I have here is in use.

One of the things you can do to help the cause is to call into the shows on Genesis (1 800 259-9231) and lend your support. Your voices will help to show the other side that we are everywhere. To call in use a pay phone, use a different name if you want and let people know about your newsletter and any other pertinent data that people may need. As I have said before many hands make for light work. Don, Tony and Nancy can use your help and our people as a whole need to be shown that our work is carrying on across the nation.

Anyway, I hope all is well with you. May God bless and keep you always. Your brother in arms and victory.

Mark Gregory: Koernke
295350 B-2-42

Chippewa Temporary
Facility, 4269 West M-80
Kincheloe, Mich. 49785

Ed.: Mark Koernke needs no introduction to most of our readers. He was one of the first patriots to go public on the perils of the New World Order.

Remember: guns don't kill people, doctors do

Number of physicians in the US: 700,000. Accidental

deaths caused by physicians per year: 120,000.

Accidental deaths per physician: 0.171 -- (U.S.Dept. of Health & Human Services)

Number of gun owners in the US: 80,000,000. Number of accidental gun deaths per year (all age groups) 1,500.

Accidental deaths per gun owner: 0.0000188 -- (Bureau of Alcohol, Tobacco and Firearms)

Statistically, doctors are approximately 9,000 times more dangerous than gun owners.

"FACT: Not everyone has a gun, but everyone has at least one doctor."

Please alert your friends to this alarming threat. We must ban doctors before this gets out of hand.

Source: *Benton County News Tribune*, November 17, 1999

Former Cop - Law Enforcement Is The Police State's Servant

By J.D. Tuccille,
About.com June, 15, 2001

Several months ago, I penned a column called "Cops who say 'no'" that turned out to be one of the more thoroughly hashed-over pieces that I've churned out. As happens when I have lots of white space to fill, I waxed philosophic and evoked my inner literary self even quoting Ralph Waldo Emerson on the way to making a simple point. *I suggested that in an age of proliferating laws that micromanage our lives and that involve ever-scariest law-enforcement powers, police officers have an obligation to consider the morality of the laws they enforce, and to refuse to enforce laws that have no business on the books.*

It's nice to be noticed, and my e-mail soon demonstrated that people have been paying attention. Messages pro and con streamed in, with a preponderance of readers saying that they agreed with the point I was making. Dissenters tended to use stronger language, leaving me only one possible response: My mother is not! -- or

not so that you can prove, anyway.

Among the more interesting messages was a note from a retired police officer (I've checked his credentials) who served with a major urban-area law-enforcement agency, and so has more first-hand familiarity with modern policing than I hope to ever have. This former officer, who asked me not to use his name so that he gets no more grief at reunion picnics than necessary, suggested that my heart might be in the right place, but I just don't understand the depths of the problem.

Rather than paraphrase what the one-time police officer said so well, I reproduce his note below... ____

I was a police officer for many years and am now retired. It is apparent to me that you suffer a few misunderstandings of the police officer's job.

However, that is not to say that you aren't right. There are many laws that are stupid, wrong, unconstitutional, feel-good (hate crimes come to mind) and silly.

Each police officer is given discretionary decision-making power. That means that barring the commission of six particular crimes (Burglary, Arson, Rape, Robbery, Murder and Mayhem) a police officer may decide for him or herself whether to arrest, report, release in the field, or simply to do nothing.

For decades, I nullified bad laws (e.g., concealed carry of a weapon by honest citizens, gambling and prostitution) and so did many other officers.

We did it because we had the power to and it was the right thing to do.

Before you suggest how to correct modern day law enforcement, I suggest you first review the reason modern local law enforcement is becoming the police state's handmaiden.

It is simple: Federal influence. Since the Nixon / Mitchell Administration, federal funds, training, hiring standards and procedures have penetrated into local law enforcement in an insidious manner.

Training is of the siege mentality type, fear is inculcated in training, and the belief that no one needs a firearm but the police is encouraged and fostered.

Waco was made possible by a perjured affidavit swearing that a drug

lab was on the premises. They lied and got the army to help under Titles 26 and 32, USC. These are the same people who have been training local law enforcement for decades.

Until we can remove the federal influence in local law enforcement, it will just get worse. Hell, it may not even be reversible.

I respect your intentions, but there is a hell of a lot you don't know about how bad it has gotten in local law enforcement. Many of these kids have never read the Constitution, nor have they been required to. They also have a natural antipathy towards armed citizens as a result of brainwashing in primary and secondary school. Many are also unrestrained and unfamiliar with self-discipline. This can be fatal if not harmful to an innocent who is doing nothing more than lawfully owning a firearm.

The job is one of the safest there is statistically, and I am sick of police administrators, in their effort to build empire, lying about being "outgunned." They pander to federal anti-constitutionalists by crying for more gun laws, but no mention of severe treatment for violent criminals. No one is in law enforcement by way of impressment or the draft. They are all volunteers and if anyone is in fear of armed citizens and not armed criminals, they should get another job, perhaps a milk route. I wouldn't recommend the U.S. Postal Service, though.

Local police are in danger of ceasing to be responsible at all to their local community and taxpayers. ____

The note is disturbing because it reflects concerns that I've heard before, but says that the problem is much more advanced than I've suspected. Two years ago, The Cato Institute came out with a report that made a splash at the time, then as is the way with such things, sank without a trace. In "Warrior Cops: The Ominous Growth of Paramilitarism In

American Police Departments," Diane Cecilia Weber started off saying:

Over the past 20 years Congress has encouraged the U.S. military to supply intelligence, equipment, and training to civilian police. That encouragement has spawned a culture of paramilitarism in American law enforcement... State and local police departments are increasingly accepting the military as a model for their behavior and outlook. The sharing of training and technology is producing a shared mindset. The problem is that the mindset of the soldier is simply not appropriate for the civilian police officer. Police officers confront not an "enemy" but individuals who are protected by the Bill of Rights. Confusing the police function with the military function can lead to dangerous and unintended consequences - such as unnecessary shootings and killings.

She then documented her point to an extent that provoked many right thinking opinion pieces recognizing the concerns she raised, but without any noticeable impact on the federalization and militarization of law enforcement.

The note that I received from the retired police officer says that not only was Ms. Weber correct - but that the problem is so advanced that it's now difficult to find police officers who haven't been trained in that paramilitary culture. ***Since "Cops who say 'no' was necessarily directed to police officers who are willing and able to make moral judgments about the law, and who identify with civilians rather than the state, my column becomes moot if my correspondent is correct.***

What's the source of this problem? Well, there's plenty to share around, and both the former police officer and Ms. Weber suggest that the rot starts in D.C.

But there's lots of finger-pointing to be shared. Police have become soldiers because people let them accumulate power and training

In the beginning of change the patriot is a scarce man, brave, hated and scorned. When his cause succeeds, however, the timid join him, for then it costs nothing to be a patriot. – Mark Twain

and toys - even encouraged it to happen. It was all in the name of "safety," the "war on drugs" and (of course) it was done for "the children" - those little yard apes who are evoked to justify every lousy idea in the modern age.

And so we got, in the words of my correspondent, "modern local law enforcement [that] is becoming the police state's handmaiden."

Fixing the problem is another matter.

When All Else Fails Read the Owner's Manual

Enumerated Powers Act HR 175

107th CONGRESS, 1st Session

To require Congress to specify the source of authority under the United States Constitution for the enactment of laws, and for other purposes.

IN THE HOUSE OF REPRESENTATIVESf, January 3, 2001

Mr. SHADEGG introduced the following bill; which was referred to the Committee on the Judiciary

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Enumerated Powers Act'.

SEC. 2. SPECIFICATION OF CONSTITUTIONAL AUTHORITY FOR ENACTMENT OF LAW.

(a) CONSTITUTIONAL AUTHORITY FOR THIS ACT- This Act is enacted pursuant to the power granted Congress under article I, section 8, clause 18, of the United States Constitution and the power granted to each House of Congress under article I, section 5, clause 2, of the United States Constitution.

(b) CONSTITUTIONAL AUTHORITY STATEMENT REQUIRED- Chapter 2 of title 1, United States Code, is amended by inserting after section 102 the following new section:

`Sec. 102a. Constitutional authority clause

`Each Act of Congress shall contain a concise and definite statement of the constitutional authority relied upon for the enactment of each portion of that Act. The failure to comply with this section shall give rise to a point of order in either House of Congress. The availability of this point of order does not affect any other available relief.'

Powell Speaks His Mind

By Walter J. Burien, Jr.

The lead off guest on Fox News Sunday (June 17, 2001) was Secretary of State Colin Powell.

Mr. Powell spoke without hesitation throughout the entire interview except for a brief period when he was talking about the Russian peoples. When he realized the consequences of making this disclosure indirectly to the American public, he froze for a second, his eyes rolled back, and then he continued without further pause for the rest of the interview. His statement establishes the primary reality of the politics and operative structure coming from government in this country.

Mr. Powell was discussing Mr. Bush's trip to Europe, and was at a point in his recitation regarding Russia being requested to cooperate with the United States to track down lost Nuclear materials and scientists who were unaccounted for, that now may be in the hands of, or in the case of the missing scientists, working for adversaries of the USA.

The quote from Mr. Powell that every American "NEEDS" to hear immediately is as follows:

[Colin Powell] - "Finding the Russian scientists may be a problem being that Russia does not have a Social Security System, as here in America, that allows us to monitor, track down and capture an American citizen"

EMPHASIS added to the word CAPTURE!

Please pass this on to every one that you know. The significance of Mr. Powell's statement is profound, and essential to be heard by all in this country.

I thank Mr. Powell for inadvertently being honest towards the underlying intent of the US Government, reaffirmed by his admission.

To the NJ Militia

Dearest friends,

I was blessed today to find in my mailbox a copy of "UN - Friend or Foe"? Thank you so much for sending it my way, as we truly need to get the word out about how dangerous the UN is to these United States. I know that the UN is beginning their

"disarmament conference" on July 9 after they have a global gun burning fest. The UN recognizes that they are going to have the most difficulty in disarming the American people, as true Americans will NOT simply hand their guns over. I know I won't and this is true for all patriots.

It is important that we get the word out about what "gun control" really means which is people control. I will certainly distribute the wonderful flyer on the UN that you sent. I hope it will wake people up!!

If I were in Jersey, I'd definitely join up. We are getting hit hard in the west with the water, roadless land grabs, eco-terrorists, etc. Please pray for us. Also, please keep in touch! It's important that patriots keep each other informed as to what's going on in their neck of the woods.

God bless,
Barb A.
Nevada

"And ye shall know the truth, and the truth shall make you free." --Jesus Christ, John 8:32

"We are apt to shut our eyes against a painful truth... For my part, I am willing to know the whole truth; to know the worst, and to provide for it." --Patrick Henry

We cannot trust NewsMax ever again.....!!!!

West Palm Beach, FL - General Alexander M. Haig, Jr. (USA Ret), former US Secretary of State, NATO Commander and White House Chief of Staff, has joined the international advisory board of NewsMax.com, the company announced June 7, 2001.

"We are pleased that such a distinguished American statesman and business leader has joined us," Lord Rees-Mogg, Chairman of NewsMax.com, said.

General Haig has been at the forefront of the new economy. He was one of the founding board members of America Online, and played a key role in making AOL the giant it has become.

NewsMax.com is a media publishing company best known for its major news portal on the World Wide Web. with more than 150,000 paid readers each month.

General Haig will join NewsMax's distinguished advisory board, which includes Robert Lohman, a former IBM executive; Nigel Evans, vice-chair of Britain's Conservative Party; Yonghao Pu, former chief economist of the Bank of China, now Senior Economist at Nomura Securities; former U.S. Congressmen John LeBoutillier, Dan Frisa and several others. The company's Board of Directors, in addition to Lord Rees-Mogg, includes CEO and President Christopher Ruddy, journalist Arnaud deBorchgrave, Dallas businessman Michael Ruff, publisher James Dale Davidson, and Admiral Thomas Moorer.

States Can Prosecute Federal Agents

In a victory for state sovereignty and federal accountability the Ninth Circuit Court of Appeals on June 5 affirmed the authority of the states to prosecute federal agents for crimes committed against citizens, ruling that "a state may prosecute federal agents if they have acted unlawfully in carrying out their duties."

The Ninth Circuit decision in *Idaho v. Horiuchi* begins by quoting Alexander Hamilton in Federalist 28: "Power being almost always the rival of power, the general [federal] government will at times stand ready to check the usurpations of the state governments, and these will have the same disposition towards the general government. . . . If [the people's] rights are invaded by either, they can make use of the other as the instrument of redress."

The case involves FBI sharpshooter Lon Horiuchi who at Ruby Ridge, Idaho shot and killed a mother, Vicki Weaver, at a remote cabin.

When the Department of Justice refused to prosecute Horiuchi, the state of Idaho charged him with

manslaughter, since Horiuchi disobeyed orders and fired into a dwelling, knowingly endangering Mrs. Weaver and her children inside.

The Ninth Circuit decision, declared that "a state may prosecute federal agents if they have acted unlawfully in carrying out their duties" whether or not they were following orders. The Court noted further that the evidence "might also support a murder charge." The decision also left open the possibility of the state prosecuting Horiuchi for perjury, noting his testimony repeatedly "contradicts itself" and even asks openly if Horiuchi was "making up [a] story" to justify his actions.

"Assuming the facts alleged by the state," Judge Alex Kozinski wrote, "this is not a case where a law enforcement agent fired his weapon under a mistaken belief that his fellow agents or members of the public were in immediate danger. Rather, a group of FBI agents formulated rules of engagement that permitted their colleagues to hide in the bushes and gun down men who posed no immediate threat."

"Such wartime rules are patently unconstitutional for a police action."

The Ninth Circuit's decision is supported by *US v. Drury*, a Supreme Court case from 1906, in which US soldiers were accused of having executed a civilian in their custody. In *Drury*, the Court ruled that any time there was an allegation that federal agents acted unlawfully in carrying out their duties the state could prosecute.

The FBI acknowledged Horiuchi's actions were unlawful, but argued he cannot be prosecuted because he enjoyed immunity.

The Ninth Circuit decision does have some problems. For example, against the wishes of

Idaho the majority said that the trial should take place before a judge rather than before a jury of Idaho citizens.

As the distinguished Constitutional scholar Akhil Reed Amar has shown, the Anglo-American tradition has always required that criminal offenses be tried before a "jury of the vicinage": one composed of citizens of the locality where the blood had been spilled. The vicinage rule derived from the local community's right to self-government, a right to judge for itself, via the jury, what had happened and how to respond. Nevertheless, this decision reaffirms our system of checks and balances

But Boundary County, Idaho Refuses to Prosecute

Re: Lon T. Horiuchi/CR -97-097-N-EJL

To whom it may concern,

The role of the Prosecuting Attorney is to be a servant of the people and the government... [Ed.: Nazis serve the government.]

This has been a very emotional, divisive and controversial issue ... and now Boundary County is faced with the decision to continue to pursue this case.

We have decided that the necessary, reasonable and sound decision to make is to dismiss this case.... Further, pursuing such a case would in no way preserve the public welfare and safety of the citizens of Boundary County.

It is our hope that this decision [about the Ruby Ridge incident] will not breed further conflict, but will begin the healing process so long deserved.

Boundary County
Prosecuting Attorney's Office

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